IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11786 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHBHAI JERAMBHAI KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for the Petitioner.

MS BANNA S DUTTA for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

Mr.M.K. Patel, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/02/2003

ORAL JUDGEMENT

The petitioner is detained as a 'Bootlegger' under the provisions of the Prevention of Anti-Social

Activities Act, 1985 ("PASA", for short). The order of detention is dated 18.5.2002. Along with the order, he is served with the grounds of detention. As per the annexure annexed with the detention order, one case is pending against the petitioner under Sections 66(1)B, 65EA, Section 116(2) read with Section 81 of the Bombay Prohibition Act, which is registered as Guna Register No.645 of 2002. The detaining authority found that the petitioner is transporting illegal liquor, thereby violating the prohibition law and by transporting the same, he is indulging in illegal activity. It is also stated in the detention order that he is a headstrong person and accordingly, he is detained as a 'Bootlegger' by way of preventive detention.

The sponsoring authority has also recorded the statements of witnesses on 30th of April, 2002 and 1st May, 2002. The witnesses have said that the petitioner is indulging in a high-handed manner and he is behaving in such manner that people are afraid of stating anything against him. It is argued by the learned Advocate for the petitioner that even though the criminal case is filed as back as on 21st February, 2002, the detention order is passed as late as on 18th May, 2002. He further submitted that even though the last statement of the so-called witness was recorded on 1st May, 2002, yet, immediately, the order is not passed. This averment even though made in the petition, there is no reply whatsoever by the authority. Since the authority has not explained the delay in passing the order after the last incident, for want of explanation, this petition requires to be allowed. Further, the learned Advocate for the petitioner relied on a decision of this Court in Special Civil Application No.78 of 2002, decided on 16.3.2000, wherein this Court has held as under :-

> " ... ...
>
> 6.1 So far as delay in passing of the corder is concerned, there is no dispute about the fact that inspection was carried out on 11th August, 1999 and the order was passed on 13th December, 1999. Time gap between these two days is not explained by the detaining authority in the affidavit-in-reply. In paragraph 11 of this affidavit-in-reply, the detaining authority states as under :-
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> " I say that it is true that inspection of shop was carried on

11.8.1999 and order of detention is passed on 13.12.1999, but at the same time, live-link is not snapped and it cannot be said that stale incidents are considered for the purpose of passing of the order of detention.

Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to "immediately prevent the petitioner from continuing his black marketing activities". This subjective satisfaction would stand vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the detaining authority and, for that purpose, as per the statement made at the Bar by Mr.Thakkar, the last statement, during the inquiry, was recorded on 16th September, 1999. Thereafter, there is no further Inquiry / Investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of about three months in passing the order. This cannot justify the genuineness of satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed.

... ..."

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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(apj)